

REMARKS

Applicant has amended the application to place the same, as a whole, into *prima facie* condition for allowance at this time. Applicant submits that substantial care has been taken to avoid the introduction of any new subject matter into the application as a result of the foregoing amendments.

Claims 3-69 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,679,283 (hereinafter the '283 patent) issued to Tonar. Solely for the purpose of facilitating compact prosecution of the present application and without, in any way, conceding to the Examiner's rejection, Applicant has canceled claims 11-18, 29-46, 55-57, and 61-66. As such, rejection of these claims should be deemed moot. In accordance with 37 C.F.R. §1.131, Applicant respectfully submits an Affidavit of William L. Tonar, which details facts surrounding the conception and reduction to practice of the invention as claimed. As stated in the above-identified Affidavit, Applicant's claimed invention was conceived and reduced to practice, with diligence, at least as early as July 21, 1994. As such, Applicant respectfully submits that the conception and reduction to practice of the present invention, antedates the filing date of the '283 patent. Accordingly, Applicant respectfully submits that the basis for rejection of all presently pending claims under 35 U.S.C. §102(e), has been overcome, and reconsideration and withdrawal of the 35 U.S.C. §102(e) rejection based upon the '283 patent are respectfully requested.

Claims 3-53, 54-56, 58-59, 61-62, 64-65, and 67-69 have been rejected under 35 U.S.C. §102(b) as being anticipated by EP 612826 (hereinafter the '826 reference). Solely for the purpose of facilitating compact prosecution of the present application and without, in any way, conceding to the Examiner's rejection, Applicant has canceled claims 11-18, 29-46, 55-57, and 61-66. As such, rejection of these claims should be deemed moot. Applicant respectfully traverses rejection of presently pending independent claims 3, 19, and 47, as well as all

associated dependent claims, as amended, for at least the following reason. Solely for the purpose of facilitating compact prosecution of the present application and without, in any way, conceding to the Examiner's rejection, Applicant has converted the subject claims from product-by-process claims to process claims – all gerunds of which necessarily form affirmative limitations to the claims for purposes of patentability. Applicant respectfully submits that inasmuch as the '826 reference is void of the teachings of the combined gerund steps in independent claims 3, 19, and 47, as well as all associated dependent claims, rejection of the same is improper relative to the presently pending claims – as amended. Accordingly, Applicant respectfully submits that the Examiner's basis for rejection of independent claims 3, 19, and 47, as well as all associated dependent claims, has been overcome, and reconsideration and withdrawal of the 35 U.S.C. §102(b) rejection based upon the '826 reference are respectfully requested.

Claims 54, 57, 60, 63, 66, and 69 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the '826 reference. Applicant respectfully submits that in light of the clarifications regarding the '826 reference *supra*, the Examiner's rejection under 35 U.S.C. §103(a) should be deemed moot, and reconsideration and withdrawal of the 35 U.S.C. §103(a) rejection based upon the '826 reference are respectfully requested.

Applicant hereby clarifies that the sentence referring to the telephonic interview in the Amendment and Communication, dated November 16, 2009, was inadvertently provided because the subject Amendment and Communication was prepared prior to scheduling the interview which was subsequently canceled. Applicant acknowledges with gratitude the Examiner's request for clarification.

In light of the foregoing, Applicant respectfully submits that the application is in *prima facie* condition for allowance at the present time. Accordingly, Applicant respectfully requests reconsideration of the present application and passage toward issuance thereof.

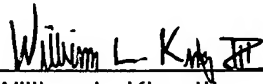
If any other charges or fees must be paid or credited in connection with this communication, they may be paid out of our Deposit Account No. 50-2131.

Should anything further be required a telephone call to the undersigned is respectfully solicited.

Respectfully submitted,

KING & PARTNERS, PLC

Dated: 5.27.10



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